CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 377

August 7, 1974

TAX OFFSET OF “UTILITY USERS’ TAXES” BY SAVINGS AND LOAN ASSOCIATIONS

Syllabus:

Revenue and Taxation Code Section 23184(a)(4) provides that savings and loan associations may offset against the franchise tax amounts paid as taxes for the storing, using or otherwise consuming of tangible personal property. "Utility users' taxes" paid to California municipalities are not included in the definition of those taxes allowed as an offset by Section 23184(a)(4).

Section 23184(a)(4) of the Revenue and Taxation Code provides:

(a) Financial corporations may offset against the franchise tax the amounts paid during the income year to this state or to any county, city, town, or other political subdivisions of the state of personal property taxes, or as license fees or excise taxes for the following privileges:

> (4) Storing, using or otherwise consuming in this state of tangible personal property by savings and loan associations.

The intent of Section 23184(a)(4), enacted in 1957, was to allow an offset to savings and loan associations for the state and local use tax imposed by California Sales and Use Tax Law. This is evident from the language of Section 23184(a)(4) which, in all relevant respects, is identical to Revenue and Taxation Code Section 6201. This intent is also evident from the fact that the utility users' tax was not being imposed by any California municipality when Section 23184(a)(4) was enacted. The reason for the offset is to place savings and loan associations on parity with banks because the former are subject to the tax while the latter are not subject to the tax by virtue of Section 16, Article XIII of the State Constitution.

At the time Section 23184(a)(4) was enacted, the state had extended the authority to impose local sales and use taxes to the counties and had provided a plan whereby the State Board of Equalization would administer the collection of both taxes. (Bradley-Burns Act, Revenue and Taxation Code Section 7200 et seq.) Section 7203.5, enacted in 1968, added a limitation that the state would not administer local sales and use tax provisions if the local government entity imposed a sales or use tax in addition to that permitted under Sections 7202 and 7203. The last paragraph of Section 7203.5 expressly provides that the section shall not be construed as prohibiting the levy or collection by a local government entity of another "substantially different tax."

In Rivera v. City of Fresno, 6 Cal.3d 132 (1971), the California Supreme Court had before it the question of whether the City of Fresno's utility users' tax was a "substantially different tax" within the meaning of that term in Section 7203.5. The court, after a thorough review of the legislative and administrative history of Section 7203.5, concluded that telephone service was not "tangible personal property" and that the utility users' taxes in their totality were "substantially different taxes" from the sales and use taxes covered by the Bradley-Burns Act.

As the wording of Revenue and Taxation Code Section 23184(a)(4) was taken from the sales and use tax provisions, the opinion of the Supreme Court clearly establishes that the "utility users' tax" is a substantially different tax from that permitted as an offset.